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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|---|---|---|---|---|
| 09/467,938 | 12/21/1999 | JOHN J. CURRO | 7897 | 2982 |

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| EXAMINER | |
|---|---|
| BEFUMO, JENNA LEIGH | |
| ART UNIT | PAPER NUMBER |
| 1771 | 19 |

DATE MAILED: 04/01/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

| Office Action Summary | Application No. | Applicant(s) | |
|---|---|---|---|
| | 09/467,938 | CURRO ET AL. | |
| | Examiner | Art Unit | |
| | Jenna-Leigh Befumo | 1771 | |

*-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --*

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

1)☒ Responsive to communication(s) filed on *28 January 2003* .

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

4)☒ Claim(s) *10-30* is/are pending in the application.

4a) Of the above claim(s) *28-30* is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *10-14,17,19-23 and 26* is/are rejected.

7)☒ Claim(s) *15,16,18,24,25 and 27* is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

**Application Papers**

9)☐ The specification is objected to by the Examiner.

10)☒ The drawing(s) filed on *21 December 1999* is/are: a)☐ accepted or b)☒ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

11)☐ The proposed drawing correction filed on _____ is: a)☐ approved b)☐ disapproved by the Examiner.

If approved, corrected drawings are required in reply to this Office action.

12)☐ The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

13)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____ .

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

14)☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).

a) ☐ The translation of the foreign language provisional application has been received.

15)☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment(s)**

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) *17* .
4) ☐ Interview Summary (PTO-413) Paper No(s). _____ .
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: .

## DETAILED ACTION

### *Response to Amendment*

1. Amendment C, submitted as Paper No. 18 on January 28, 2003, has been entered. Claims 10 and 19 have been amended. Therefore, the pending claims are 10 – 30. Claims 28 – 30 are withdrawn from consideration as being drawn to a nonelected invention.

2. Amendment C is sufficient to overcome the 35 USC 112 2nd paragraph rejection set forth in section 7 of the previous Office Action, since the Applicant has removed the term "prebonded" from the claims.

3. Additionally, Amendment C is sufficient to overcome the 35 USC 102/103 rejection based on Srinivasan et al. (5,567,501), since Srinivasan et al. fails to explicitly teach forming apertures with an aspect ratio of greater than about 3. However, a new 35 USC 103 rejection based on Srinivasan et al. is set forth below.

### *Drawings*

4. The drawings are objected to as failing to comply with 37 CFR 1.84(p)(4) because reference character "104" has been used to designate both supply roll for the first web and the supply roll for the second web. It is noted that according to the specification, the supply roll for the second should be number 105. A proposed drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

5. The drawings are objected to as failing to comply with 37 CFR 1.84(p)(4) because reference character "130" has been used to designate both the central layer before it is bonded to the outer layers and the nip formed between rolls 134 and 136. A proposed drawing correction

or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

6. The drawings are objected to as failing to comply with 37 CFR 1.84(p)(5) because they include the following reference sign not mentioned in the description: 102, in Figure 10. A proposed drawing correction, corrected drawings, or amendment to the specification to add the reference sign in the description, are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

***Double Patenting***

7. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970);and, *In re Thorington,* 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

8. Claims 10 – 19 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1, 2 – 7, and 20 of copending Application No. 09/553,641 for the reasons of record.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

9. Claim 19 is provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claim 20 of copending Application No. 09/553,871 for the reasons of record.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

***Claim Rejections - 35 USC § 103***

10. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

11. Claims 10 – 14, 17, 19 – 23, and 26 are rejected under 35 U.S.C. 103(a) as being unpatentable over Srinivasan et al.

Srinivasan et al. discloses a thermally apertured nonwoven laminate comprising nonwoven outer layers bonded to a middle layer (abstract). The laminate is designed to be used as a topsheet in a diapers or personal care products (column 1, lines 12 – 17). Thus, additional layers would be placed adjacent to the apertured laminate. The laminate comprises two outer nonwoven layers and a middle film layer (column 1, lines 60 – 65). The apertures are formed under heat and pressure causing the middle layer to bond to the outer layers and shrink away from the heat forming apertures (column 2, lines 52 – 62). The fibers of each outer layer and the middle layer become fused together and form a fused border at each aperture (column 3, lines 15 – 22). Thus, the fibers of the outer layers will inherently be in contact at the edges of the apertures, which correspond to the applicant's bond sites. Also, since the apertures are formed using heat, the bonds between the outer layers are thermal bonds.

The middle layer can include various types of plastic films (column 4, lines 9 – 12), apertured plastic films (column 4, lines 43 – 45), or a nonwoven web comprising bi-component fibers (column 4, lines 52 – 60). Specifically, Srinivasan et al. teaches adding elastic properties to the laminate by using an elastomeric film as the middle layer (column 5, lines 4 – 10).

Even though Srinivasan fails to teach that the bond sites have an aspect ratio of at least about 3, Srinivasan discloses that the bond pattern can have one of a number of different geometries (column 6, lines 54 – 56). And Srinivasan teaches that the laminate can be stretched to enhance the aperture clarity and size (column 3, lines 54 – 57). Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to choose the claimed aspect ratio, since it has been held that discovering an optimum value of a result effective variable involves only routine skill in the art. *In re Boesch*, 617 F.2d 272, 205 USPQ 215. One of ordinary skill in the art would stretch and orient the laminate to increase the clarity and size of the aperture, without stretching the laminate too much causing the laminate to tear or break. Further, one of ordinary skill in the art would want to optimize the amount of air and liquid which can travel through the laminate so that the laminate will be comfortable when worn against the skin in absorbent products. Therefore, claims 10 – 14, 17, 19 – 23, and 26 are rejected.

12. Claims 19 – 23 and 26 are rejected under 35 U.S.C. 103(a) as being unpatentable over Palumbo (WO 96/10979).

Palumbo discloses a laminate with apertures comprising an upper layer, an intermediate, and a lower layer (page 3). The laminate is designed to be used as a coversheet in personal care products (page 1). The upper and lower layers are nonwoven webs (page 4). The intermediate

layer is an elastic film comprising a thermoplastic elastomer (page 5). The laminate is produced by running the three layers through rollers with heated teeth which form the perforations in the laminate and thermally bond the layers together (page 7). Palumbo teaches that the outer layers are thermally bonded to each other at the edges of the perforations (page 7).

Palumbo discloses that the size and spacing of the perforation can be chosen according to the intended use (page 9). Further, Palumbo discloses the perforations can be the same as those described in EP-A-207904, which includes elliptical shape. Therefore, it would have been obvious to one of ordinary skill in the art choose the claimed aspect ratio, since it has been held that discovering an optimum value of a result effective variable involves only routine skill in the art. One of ordinary skill in the art would be motivated to choose the shape based on the strength of the laminate produced as well as the comfort of the fabric when it is used next to the skin. Additionally, the preamble limitations are considered to be intended use of the laminate materials and do not add further structure to the claimed structure. Thus, claims 19 – 23 and 26 are rejected.

13. Claims 19 – 23 and 26 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kielpikowski et al. (4,842,596).

Kielpikowski et al. discloses a elastic fabric composite made by sandwiching a liquid impermeable and nonself-adhering elastomeric film or nonwoven carrier sheet between at least a pair of nonwoven facing sheets, bonding the sheets together by autogenous bonds through the carrier sheet at spaced apart sites thereby forming apertures (column 10, lines 14 – 23). The composite would have distinct regions differentiated by thickness and density located at and adjacent to where the apertures are formed.

Kielpikowski et al. fails to teach the shape of the apertures. However, it would have been obvious to one having ordinary skill in the art at the time the invention was made to choose the claimed aspect ratio, since it has been held that discovering an optimum value of a result effective variable involves only routine skill in the art, as set forth above. One of ordinary skill in the art would want to optimize the size and shape of the aperture to control amount of air and liquid which can travel through the laminate as well as controlling the surface area of the laminate, so that the laminate will be comfortable when worn against the skin in absorbent products. Therefore, claims 19 – 23, and 26 are rejected.

***Response to Arguments***

14. Applicant's arguments filed January 28, 2003 have been fully considered but they are not persuasive. The Applicant argues that prior art does not teach using an aperture with an aspect ratio of at least 3, nor with it be obvious to modify the laminate in such a manner (Amendment C, pages 3 – 4). However, it is felt that choosing the claimed aspect ratio involves only modifying the size of the aperture, and not critically changing the structure of the laminate. Where the only difference between the prior art and the claims was a recitation of relative dimensions of the claimed article and a article having the claimed relative dimensions would not perform differently than the prior art article, the claimed article was not patentably distinct from the prior art article. In other words, the Applicant must show that the claimed shape is critical to the function of the article and has produced unexpected results which would not be in the prior art or obvious to one of ordinary skill in the art. Therefore, the rejection is maintained.

***Allowable Subject Matter***

15. Claims 15, 16, 18, 24, 25, and 27 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims. The claims are allowable for the reasons of record.

***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jenna-Leigh Befumo whose telephone number is (703) 605-1170. The examiner can normally be reached on Monday - Friday (9:00 - 5:30).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Terrel Morris can be reached on (703) 308-2414. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 872-9310 for regular communications and (703) 872-9311 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0661.

Jenna-Leigh Befumo
March 26, 2003

TERREL MORRIS
SUPERVISORY PATENT EXAMINER
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